Koch Label Company, Inc. *and* Graphic Communication Local 117-C, a/w Graphic Communications International Union. Cases 25–CA–21113 and 25–CA–21113–2

June 15, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On January 28, 1992, Administrative Law Judge George F. McInerny issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Koch Label Company, Inc., Evansville, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Threatening to discharge or otherwise discipline employees if the Union files or otherwise pursues a grievance against the Respondent because of previous discipline of employees.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondent's motion to substitute a correct p. 3 of its exceptions is granted.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We will modify the judge's recommended Order and substitute a new notice that more closely conforms to the violation.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to discharge or otherwise discipline employees if the Union files or otherwise pursues a grievance against us because of previous discipline of employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

KOCH LABEL COMPANY, INC.

Walter Steele, Esq. and *Theofilos Galoozis, Esq.*, for the General Counsel.
Jon D. Goldman, Esq. (Kahn, Dees, Donovan & Kahn), of Evansville, Indiana, for the Respondent.
Raymond N. Larson, of Piqua, Ohio, and *Arthur Oldham*, of Evansville, Indiana, for the Charging Party.

DECISION

GEORGE F. MCINERNY, Administrative Law Judge. Based on a charge filed on January 28, 1991,[1] in Case 25–CA–2113 by Graphic Communications International Union Local 117–C (the Union), and a charge in Case 25–CA–21113–2 filed by the Union on January 30; the Regional Director for Region 25 of the National Labor Relations Board (the Regional Director) issued a complaint on March 12 alleging that Koch Label Company, Inc. (the Respondent or the Company) had violated certain provisions of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act). The Company filed a timely answer denying the commission of any unfair labor practices.

Pursuant to notice contained in the complaint, as supplemented by orders of the the Regional Director on May 9 and 30, a hearing was held before me at Evansville, Indiana, on June 5 and 6, at which all parties were represented and had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, to make motions and offers of proof, and to argue orally. After the conclusion of the hearing, the Company and the General Counsel filed briefs, which have been carefully considered.

Upon the entire record, including my observations of the witnesses, and their demeanor, I make the following

[1] All dates herein are in 1991 unless otherwise specified.

FINDINGS OF FACT

I. JURISDICTION

The Company is a corporation existing under and by virtue of, the laws of the State of Indiana. At all times material it has maintained its principal office and place of business at Evansville, Indiana, where it is engaged in the manufacture sale and distribution of labels. During the 12 months just prior to the issuance of this omplaint, the Company sold and shipped from its Evansville facility goods valued in excess of $50,000 directly to points outside the State of Indiana. The complaint alleges, the answer admits, and I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Hodge—Simms Incident*

The Company and the Union have had contractual relations for so many years that no one could remember just when they began.

Linda Thacker, a guillotine (paper cutter) operator, was the chief steward at the plant from March 1989 to March 1991.

Early in 1991, the Company and the Union were engaged in bargaining for a new collective-bargaining agreement. Thacker was elected as one of the members of the bargaining committee.

As chief steward, Thacker was called in whenever an employee was to be disciplined. On January 12, Thacker was working with an employee named Debbie Hodge. During a lunchbreak Hodge left the plant and went to lunch with an employee named Scott Simms, who was not working that evening. When Hodge and Simms arrived back in the parking lot they were met by Hodge's estranged husband, who apparently assaulted her. She was able to get away, and escaped into the plant. According to Thacker, however, the husband made several calls to Hodge, who was very upset, crying, and unable to work for the rest of the shift. Eventually she was sent home. We have no evidence in the record directly concerning this incident, but suffice it to say that management took it very seriously, because of the possibility of people being hurt, as well as the disruption of production in the plant.[2]

On Monday, January 14, Thacker was called in to meet with Supervisors Mike Meyer and Tom Woodward. They told her about their concerns over the incident, and indicated that Simms and Hodge were going to be disciplined by means of a final warning. Thacker replied that she thought the purnishment was too harsh. She said that all Simms did was to pick up someone for lunch, and he was really not involved in the incident.

Later that day Thacker was called into the office of Mike Clark, senior vice president of administration. Clark told her that he was very upset with the position she had taken on the Simms matter. They discussed it and finally Clark told her that if she persisted in her position he could just terminate Simms and they wouldn't have to go through all this. After this Thacker intended to consult with Arthur Oldham, president of Local 117–C, but she had not done that before she was called into Meyer's office the next day. Meyer and Woodward were there and they showed Thacker the letters which they were going to present to Simms and Hodge. Thacker looked the letters over, and told Meyer and Woodward that they should drop the whole Simms case. She had found that Simms had not even come into the plant or the grounds to pick up Hodge, but had met her down the street. Thacker's feeling was that Simms had done nothing wrong, had no control over Hodge's husband, and should not be disciplined in the matter.

At that point either Woodward or Meyer called Clark, who came to Meyer's office. Thacker repeated her request that they drop the Simms discipline, but Clark refused. There was some further discussion and Clark finally said that if Thacker ''challenged him on it,'' he might as well just terminate them.''[3] Clark then left, and Simms was called in to receive his disciplining letter.[4]

Thacker was concerned about the effects of her pursuing a grievance on the matter. She told Simms that she would rather fight a letter than his termination. She then discussed the matter with Oldham and Raymond N. Larson, International representative of the Graphic Communications International Union, who was in Evansville in connection with the contract negotiations. Larson told Thacker to file the instant case with the National Labor Relations Board. She filed the charge, but never did file any grievances on either Hodge's or Simms' cases.

Mike Clark's testimony on these issues differed in minor respects from Thacker's, but they were in substantial agreement on the fact that Clark did tell her that if she pursued the matter, he ''might as well terminate'' the two employees.

B. *The Alleged Individual Bargaining*

At the beginning of the negotiations between the Company and the Union on January 7, the Company presented the Union with a proposal to change from the current 8-hour shifts to some kind of 12-hour 7-day-shift system for employees. The mechanics of these kinds of proposals are complex and hard to understand. The evidence here does not go into detail as to the proposal, but it was made, and rejected by the Union. The Company then asked the Union for suggestions, ideas or counterproposals on the 12-hour issue, but, so far as the record shows, none were forthcoming. The parties stipulated that the negotiations began on January 7, lasted through nine sessions, and concluded on February 8. The contract was ratified by the Union on February 9.

Sometime in January, according to the testimony of employee Donna Garrett, she had a conversation with Helen Clark, Mike Clark's wife, who was then employed in the bargaining unit. Garrett asked Helen Clark why the Company was so insistent on the 12-hour-day proposal, and asked

[2] The details of this incident are not important to the issues in this case.

[3] Thacker said that she was not so concerned about Hodge, even though Hodge and her husband were separated and she had obtained a restraining order against him.

[4] He did not get the letter then, because they had to change some wording, but he did get it later.

Helen Clark to find out from her husband if ''something else can't be done; why won't he listen to other suggestions.'' Helen Clark said she would ask Mike about it.

Mike Clark testified that his wife told him that ''Donna'' had asked him about the 12-hour proposal, and whether he would listen to suggestions. Now Mike Clark knew that one Donna Steele was a member of the Union's bargaining committee, and, while he was puzzled that she was not aware of what the Company had said during negotiations, that they were willing to listen to any suggestions or proposals on the 12-hour issue, he thought it might be helpful if he talked to Donna Steele about the matter. He consulted with Company President Robert Skau and Attorney Jon Goldman. The next day, or a day later, Mike Clark went looking for Donna Steele, but found that she was not in the plant. He then talked to his wife, who told him that the questioner was not Donna Steele but Donna Garrett. Clark again checked with Skau and Goldman, and it was decided to go ahead and talk to Garrett.

Clark approached Garrett at a cutter where she was working and he asked her if she wanted him to answer her questions at the time. She said she did. Clark then asked her to come up to an area where employees Diana Schenk and Julie Werne were working, so, as Clark put it, ''we are not accused of doing something that we should not be doing.''

Both Garrett and Clark agreed that he told the employees, in answer to Garrett's question, that the Company could do something about the 12-hour proposal, that he had indicated that to the Union but the Union had not responded. He concluded by telling the employees that if they had any suggestion he was willing to listen, but they should take it to the Union and tell them to talk to him about it.[5]

In another incident, employee Peggy Dennis testified that a neighbor of hers, Mike Carley, spoke to her about the 12 hours proposed. The conversation was in mid-January, but Dennis was not asked whether it happened at the plant or in their neighborhood. She said that she did not recall whether she or Carley brought up the subject of the negotiations, but she did say that Carley asked her how she felt about the ''twelve hours.'' She replied that she was tired when she had to work overtime and that she felt that some of the older women would not be able to work a 12-hour shift. Carley told her that there were other ways of scheduling the 12 hours, that the Company needed this type of scheduling to expand and grow, and asked her to ''talk it up to the other employees.

Carley did not testify[6] and, while this testimony was somewhat vague, I find that the talk did happen, and that Carley did urge Dennis to talk up the Company's position among the other employees.

[5] This is taken directly from Donna Garrett's testimony. Clark's version is substantially the same. Julie Ann Werne also testified, but her testimony was rather vague, shifting, and inconsistent with the testimony of Garrett and Clark, which I credit.

[6] The fact that Carley did not testify does not give rise to any inferences. There is no indication that Carley was not available to the General Counsel under subpoena, as well as to the Company so his failure to appear would not lead to an inference that he would have testified, if he had appeared, in a way contrary to the Company's position. As far as what he said to Dennis, I found her testimony to be credible and I have no problem finding that Carley did say what she testified that he said.

The complaint here alleges that Carley is a ''Technical Manager, quality Assurance Department,'' and that he is a supervisor and agent of the Company. This allegation was denied by the Company in its answer. Mike Clark testified that Carley is a quality control technician whose primary duties are to monitor the type and quality of incoming raw materials, inks and papers and such, and the quality of outgoing labels produced by the Company. He is a salaried employee, earning $40,000 a year at the time of this hearing, and reporting to the head of the Company's quality assurance department, Alan Bartnik. Carley receives benefits which are reserved to nonbargaining unit employees, including both managerial and supervisory employees, but also clerical employees. There is no evidence here that Carley exercises any of the supervisory indicia set out in Section 2(11) of the Act. Indeed, the testimony of Mike Clark, as well as that of employee witnesses Dennis, Garrett, Werne, and Thacker, gives clear indications that Carley does not exercise any of these statutory functions.[7]

Nor is there any evidence that Carley was an agent of management, or acted so as reasonably to give the impression that he was a representative of, or spoke for, management.

I cannot find in these circumstances that Carley was a supervisor, or a manager, or that he appeared to employees to be an agent of management.

C. *Analysis*

I appreciate the fact that this Company and this Union have maintained a relationship since a ''time whereof the memory of man runneth not the contrary;''[8] and the facts shown here that the relationship between Clark, the vice president for administration, and Linda Thacker, the Union's chief steward, was a comfortable, easy, long time, relationship. However, even in these circumstances, neither one party nor the other is entitled to use the relationship to attempt to diminish the statutory rights of the other. Here Thacker and Clark are in agreement on the key words used by Clark—if Thacker persisted (on behalf of these employees, and the Union) then he might as well terminate Simms and Hodge. It doesn't matter whether he would have done it or not. Thacker, who, as I have noted, knew Clark well said she believed he would have fired Simms and Hodge. Inevitably such a statement interferes with the right of employees and I find that Clark's statement is a violation of Section 8(a)(1) of the Act. *American Freightways Co.*, 124 NLRB 146 (1959).

I do not feel the same way about the additional allegation that Clark acted in violation of law in his conversation with Garrett, Werne, and Diane Schenk in mid-January. Clark's version of the conversation as substantially corroborated by Donna Garrett, seems to me to be both logical and credible.

The question then comes, whether Clark's comments to these three women, in and of themselves, show an intent to frustrate the bargaining process or to avoid the Company's bargaining obligation. I do not believe that those remarks, as

[7] The employee witnesses did testify that they thought Carley was connected with management, but none could specify what that connection was. Neither Carley, nor any of the employees in the quality assurance department were called to testify here.

[8] Blackstone, *Commentaries*, Vol. 1, Book 1, Ch. XVIII No. 472.

reported by Garrett and Clark himself show that to be the case. Clark's attitude was noncoercive. He ''fully acknowledged the Union's rightful role as the employees'' statutory bargaining representative,'' and there was no suggestion that the employees ''abandon their Union and negotiate for better terms'' with the Company. *United Technologies Corp.*, 274 NLRB 609 (1985). Rather, Clark's conduct indicates a sensitivity to the relations between the employees and their Union, and I find that his only purpose was to foster understanding and consideration for the employees, emphasizing that these employees should talk to their bargaining representative.

I do not find this to be a violation of Section 8(a)(1) or (5) of the Act. *United Technologies*, supra.

With respect to the Carley incident, I find that, even if Carley is found to be a supervisor and agent of the Company in this context, his remarks to Peggy Dennis, that he felt that 12-hour shifts were important to the Company, and that she should talk about the issue to other employees did not violate Section 8(a)(1) or (5), *United Technologies*, supra.

IV. THE REMEDY

Having found that the Company has violated Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom.

CONCLUSIONS OF LAW

1. The Respondent, Koch Label Company, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Graphic Communication Local 117–C, a/w Graphic Communication International Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to discharge employees Hodge and Simms if the Union pursued contractual grievance procedure, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The Respondent has not engaged in any other unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Koch Label Company, Inc., Evansville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge or otherwise discipline employees if the Union proceeds to file grievances over other lesser disciplinary action.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate these policies of the Act.

(a) Post at its facility in Evansville, Indiana, copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''